ESSAYS IN LEGAL HISTORY, read before the International Congress of Historical Studies, held in London in 1913. Edited by PAUL VINOGRADOFF, Corpus Professor of Jurisprudence in the University of Oxford. London and New York: OXFORD UNIVERSITY PRESS. 1913. pp. viii, 396.

This collection of twenty addresses and papers, by English, German, French, Italian, Slavic and Scandinavian jurists, indicates the energy with which the field of legal history is cultivated in Europe. Of the four papers that deal with the law of the Roman republic and empire, two merit especial attention. In his contribution, "Zur Geschichte der *Hcredis Institutio*," Professor Otto Lenel, perhaps the leading Roman historian of the present day, breaks with the accepted opinion regarding the antiquity of the *heredis institutio* in Roman testaments, seeking to show that neither the older comitial testament nor the later mancipation testament (in its original form) established any universal succession in the proper sense of the term. The Roman testament, in the earlier stages of its development, provided specifically, he thinks, for the transfer of the homestead and of the rest of the testators' property to legatees. It was thus essentially a "bequest-testament" (*Legatentestament.*) To the reviewer the arguments presented by the distinguished writer seem to fall considerably short of proving his contentions; but the condition of the sources probably makes any reconstruction of the earlier law of testation debatable. The paper seems well adapted to evoke a protracted controversy.

Less revolutionary, but interesting and valuable, is Professor S. Riccabono's lengthy and careful study of certain aspects of Roman joint ownership, "Dalla *Communio* del diritto Quiritario alla comproprietà moderna." The Italian jurist maintains that the third-century view of the relations between joint owners, as set forth in the writings of the jurists from which Justinian's Digest was compiled, was modified by systematic "interpolations" in the texts cited. According to the third-century theory, each joint owner has in its fulness the right of ownership; and it follows that, in case of disagreement regarding the use of such property, or regarding legal dispositions which are to affect it, nothing can be done: *potior est causa prohibentis.* In case of disagreement, then, there is no remedy except partition. In the sixth century, on the other hand, Justinian's commissioners, by fitting old actions to new uses, established a judicial control by virtue of which unreasonable dissent, particularly on the part of a minority interest, can be overridden. Stress is laid on the common interest of all. In these changes Professor Riccabono sees the triumph of a social theory of property over the individualistic theory, and this he attributes in part, at least, to the Christian idea of fraternity.

An interesting paper by Professor H. Goudy, "Two Ancient Brocards," carries the reader from Roman into English law. The brocards or maxims which he studies are those which assert that "the personal action dies with the person," and that "he who owns land owns up to the sky." Professor Goudy shows the precise and limited significance of these maxims in their original Roman form, and the extent to which they were misunderstood by English writers and misapplied in English law. The last paragraph of this paper carries us in the very modern question of trespass by aeroplane.

In his "Sketch of the History of the Four Inns of Court," Dr. W. Blake Odgers gives us the result of patient antiquarian research in attractive literary form. He deals with his subject in the broadest

way, beginning with the topographical history of London, and telling us much about the Templars before their possessions passed into the hands of the lawyers. He explodes certain venerable legends that have clustered about Tavy's or Davy's Inn, and prepares the reader to appreciate Professor Holdsworth's criticism of Lord Coke as a historian by showing how, in this matter, the great lawyer jumped to a rash conclusion.

Perhaps the most substantial contribution to English legal history in this volume is Dr. H. D. Hazeltine's essay on "The Early History of English Equity." Its purpose is to show to how large an extent the common-law courts anticipated "the more fully and elaborately developed system of the Chancery in a later age." The paper is doubly valuable in that it presents briefly the results of previous investigations in this field and, more fully, certain new conclusions of the writer. As regards the protection of the *cestuis que usent* he summarizes the contentions of Holmes and Ames. As regards gages, he restates the conclusions which he himself reached in his earlier studies of gages of land and has elsewhere published. Before the time of Edward I, Dr. Hazeltine maintains, the common-law courts had already worked out a rudimentary "equity of redemption". As regards relief against penalties, he cites *Umfraville* v. *Lonstede* (1308-1309), to which Maitland had drawn attention in his Introduction to the Selden Society's edition of the Year Books of 2 and 3 Edward II. As regards specific performance, Dr. Hazeltine summarizes the contentions already advanced in his essay on the subject in the *Festgabe für Kohler.* "At least two hundred years before the earliest decree of the Chancellor," he says, "the common-law courts * * * were giving, in their own way, much the same remedy." In dealing with the common-law writs of prohibition, he breaks newer ground, and to this topic he therefore devotes more than half of his space. What he points out is "that, in the procedure of the early common-law courts, writs of prohibition and of *estrepement* and judicial orders issued in proceedings begun by various other common-law writs anticipated the Chancery jurisdiction as a process *in personam* whereby parties, as well as courts, were commanded to do or to refrain from doing a particular thing." Most of the early cases are found in Bracton's Note Book, and deal with waste; credit is given to Professor G. W. Kirchwey's "valuable 'Liability for Waste', 8 Columbia Law Review, 425-437." Dr. Hazeltine cites two cases in which the judgment of the court ordered the defendant to repair buildings or rebuild them. To secure obedience, the defendant was often required to find pledges; disobedience was normally punished by damages and amercements. In the case of the writ of *estrepement,* as modified by the Statute of Gloucester, 6 Edw. I, prohibiting waste while legal proceedings were in progress, the disobedient waster might be imprisoned for contempt of court. Prohibitions against persons were not confined to cases of waste. Maitland had already called attention to the case of *Prior of Coventry* v. *William Graumpe and others,* in which infringement of market right was prohibited, and had commented: "If this is not an 'injunction,' and a 'perpetual injunction,' we hardly know what to call it." In Bracton's Note Book and in the Year Books Dr. Hazeltine finds orders "not to commit nuisance, not to sell land, not to distrain the plaintiff to do suit of court, not to destroy the wood in which the plaintiff has house-bote and hay-bote", etc. In conclusion, brief reference is made to certain other writs which are closely related to the

writs of prohibition, viz., writs *quia timet*. These also were writs of prevention, and anticipated the Chancery bills *quia timet*.

Sir Frederick Pollock's paper on "The Transformation of Equity" furnishes at one point a valuable supplement to Dr. Hazeltine. Summarizing the facts brought out by Mr. Bolland in editing for the Selden Society the proceedings of Edward II's justices in eyre, he notes that in many cases causes of action "were brought before the justices by presenting a bill instead of suing out a writ," and that these bills "have a marked resemblance in their frame, and in many cases as to their contents also, to the earliest bills in Chancery." In the main, however, Sir Frederick Pollock's paper is devoted to drawing a distinction between the spirit of early equity and that of equity in the seventeenth and following centuries.

Dr. W. S. Holdsworth, in his paper on "The Influence of Coke on the Development of English Law," gives us much more than the title promises. He studies Lord Coke as a legal historian, as a jurist, as an authority in private and public law; he sums up, with judicial impartiality, the merits and the defects of his writing; and he justly emphasizes Coke's far-reaching services in preserving "for England and the world the constitutional doctrine of the rule of law." "We may surely claim," he writes, "that these large results * * * entitle the most English of our English common lawyers to a place among the great jurists of the world."

In singling out for notice a few of the papers collected in this volume the reviewer has been guided rather by the interest they may possess for the readers of this journal than by their intrinsic value. Equally valuable contributions to the history of legal theory and to the development of public law may perhaps be discussed more fitly in a less technical journal.

Munroe Smith.

VALUATION OF PUBLIC SERVICE CORPORATIONS. By ROBERT H. WHITTEN. New York: THE BANKS LAW PUBLISHING CO. 1912. pp. xl, 798.

The author of this work has certainly chosen a subject of great and increasing importance to the public and to the legal profession. The necessity of valuing the property of public service corporations arises in connection with public purchase of their plants, in matters of taxation, and preeminently in the regulation of rates. Furthermore the practice is growing of requiring or authorizing state and city public service commissions to make valuations of the property of railroads, street railways, light, water, telegraph and telephone companies, and we have recently seen provision made for valuing the property of all of the common carriers in the United States. In view of these facts the publication of such a book as that under review is fully justified.

One of the interesting and valuable features of Mr. Whitten's book is that its material is drawn not merely from the decisions of courts, but also very largely from the decisions of the Interstate Commerce Commission and of state and local commissions, from the reports of special masters, special arbitrators and appraisers, and from papers read before various bodies. Since much of this material is not readily available to the average reader, the author has thought it not only justifiable but necessary to quote at length from the authorities cited. This gives the book something of the character of a digest, and often makes tedious reading, and yet it undoubtedly makes for practical